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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,122	04/14/2004	Gregory Ashton	9523	6454

27752 7590 05/15/2006

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CINCINNATI, OH 45224

EXAMINER
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HILL, LAURA C

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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10-824122

EXAMINER
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ART UNIT	PAPER
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20060509

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

# Office Action Summary

Application No.

10/824,122

Applicant(s)

ASHTON ET AL.

Examiner

Laura C. Hill

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/14/04, 9/13/04 & 8/26/05

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species: species I (figure 8) and species II (figure 9). The species are independent or distinct because the height of the first cuff relative to the second cuff varies and would thus require an additional search. Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Adam Foreman on 18 April 2006 a provisional election was made with traverse to prosecute the invention of species I, claims 13. Affirmation of this election was made by applicant in the preliminary amendment and subsequent remarks filed 18 April 2006. Claim 14 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant has argued that the election requirement between species I and II as being none persuasive because a search of the inventions can be done without serious burden to the Examiner. Applicants' arguments that the search of one invention must

necessarily result in a search of the other one has been considered, but is not persuasive insofar as the searches are not co-extensive and an additional search would be necessary/required for the combination of inventions.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a) because they fail to show the 'first elastic' and 'second elastic' having 'first and second ends' as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Information Disclosure Statement***

It is noted that the following documents listed on the Information Disclosure Statement filed 13 September 2004 are duplicates of the documents listed on the Information Disclosure Statement filed 14 April 2004 and thus have only been considered once: US 3860003, US 5167653, 5904675, 5993433, and 6,440,117. It is also noted that there are over 150 US and foreign document total references listed on the IDS documents filed 13 September 2004, 14 April 2004 and 26 August 2005.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by St. Louis et al. (US 5,993,433; herein 'Louis'). Regarding claims 1-2, 4, 6-7, and 15-16 Louis discloses a unitary disposable pre-fastened absorbent article such as adult incontinence garments or training pants (column 3, lines 26-38) comprising: an absorbent body structure 32 sandwiched between liquid permeable top sheet layer 28 and impermeable back sheet layer 30 (column 3, lines 52-56 and column 8, lines 41-46); and an elastically contractible dual cuff 19 having proximate end/area near edge 141 and distal end/area near edge 140 (column 4, lines 60-63, figures 1 and 6), said dual cuff 19 being joined to the article via single leg gusset attachment/cuff bond 172 (column 18, line 66-column 19, line 11 and figure 6), said first cuff being on the left side

disposed between proximate end 141 and cuff bond 172, said second cuff being disposed between the cuff bond 172 and distal end 140 (figure 6), said dual cuff 19 being constructed of a continuous cuff material 174 and enclosed by the cuff bond 172 (column 4, lines 60-63 and figure 6), wherein the distal end is formed by folding the cuff material 174 (column 5, lines 40-42 and figure 6); wherein first cuff envelopes at least one first elastic 68a (column 5, lines 42-46) and wherein the at least one first elastic 68, 68a is secured to the first cuff near the first and second ends (figure 6); wherein second cuff envelopes at least one second elastic 138 (column 5, lines 7-12), wherein the second elastics 138 are secured to the second cuff near the first and second ends (figure 6); wherein the first and second cuffs are elasticized upright barrier cuffs (figures 1, 4 and 6).

Regarding claim 3 Louis discloses first cuff elastics 68, 68a associated with second cuff via an adhesive (column 16, lines 55-64)

Regarding claim 5 Louis discloses second cuff elastics 138 are associated with the first cuff by securement via an adhesive strip 174 (column 16, lines 10-16 and figure 6).

Regarding claims 8-12 Louis discloses gusset-flap members 19 having continuous cuff material made of spunbond/lesser water-permeable-meltblown/more water permeable laminates and other conventional materials such as polymer films (column 7, lines 55-67).

Regarding claims 13 and 17 Louis discloses first and second cuffs as discussed above with respect to claim 1 above. Louis further discloses the first cuff stands taller than the second cuff (figure 6).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Itoh (US 2002/0123733) is cited for showing disposable diaper with dual cuff being joined to the article by cuff bond 70, first cuff being disposed between proximate end 7b and cuff bond, second cuff being disposed between cuff bond 70 and distal end 11, the first cuff envelopes first elastic 73, second cuff encloses but does not envelop second elastic 61, and the dual cuff is not constructed of a continuous cuff material. Suzuki et al. (US 5,061,261) is cited for showing a disposable diaper with side flap 6 comprising a third portion 12 folded over and enveloping elastics 5a, 5b and is attached to first portion 11 via adhesives 14a and 14b.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

